

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
FEDERAL TRADE COMMISSION, STATE OF NEW :
YORK, STATE OF CALIFORNIA, STATE OF : 20cv00706 (DLC)
OHIO, COMMONWEALTH OF PENNSYLVANIA, :
STATE OF ILLINOIS, STATE OF NORTH : ORDER
CAROLINA, and COMMONWEALTH OF :
VIRGINIA, :
Plaintiffs, :
-v- :
VYERA PHARMACEUTICALS, LLC, AND :
PHOENIXUS AG, MARTIN SHKRELI, :
individually, as an owner and former :
director of Phoenixus AG and a former :
executive of Vyera Pharmaceuticals, :
LLC, and KEVIN MULLEADY, individually, :
as an owner and former director of :
Phoenixus AG and a former executive of :
Vyera Pharmaceuticals, LLC, :
Defendants. :
----- X

DENISE COTE, District Judge:

Tomorrow, pursuant to a schedule set on September 11, 2020, the parties in this action must file their joint pretrial order and associated documents. This past Spring, on April 1, the bench trial in this action was set for Tuesday, December 14. On September 14, the parties were ordered to confer regarding whether defendant Martin Shkreli -- who is currently incarcerated in the United States Bureau of Prisons ("BOP") Allenwood Correctional Institution located in Allenwood, Pennsylvania -- would attend the trial, and if so, to provide

the Court with the necessary writ of habeas corpus. Shkreli's counsel has accepted the obligation to produce him for trial, but has yet to provide the necessary writ to the Court.

Instead, on October 13, Shkreli moved to adjourn trial to a date no earlier than May 1, 2022 on the basis that his progress in the Residential Drug and Alcohol Program ("RDAP"), a voluntary early release program administered by the Bureau of Prisons ("BOP"), would be jeopardized by the interruption of time needed to attend trial in New York. Shkreli declined two prior opportunities to participate in RDAP, once in November 2019 and again in March 2021. In March 2021, Shkreli was aware that the pretrial order was due on October 20, 2021. Shkreli entered RDAP on or about June 29, 2021 and projects that if he successfully completes all program requirements that he may be released from prison to a half-way house in April 2022 and may secure release from BOP custody entirely by October 11, 2022, which would be one year earlier than his projected release date.

The plaintiffs, the Federal Trade Commission and seven States, opposed the motion on October 15. Shkreli replied in further support on October 18. Having reviewed the parties' submissions and being familiar with the record in this case, it is hereby

ORDERED that the motion is denied. Shkreli's request is untimely. It is made on the eve of the filing date for the

pretrial order documents and months after he joined the RDAP program.

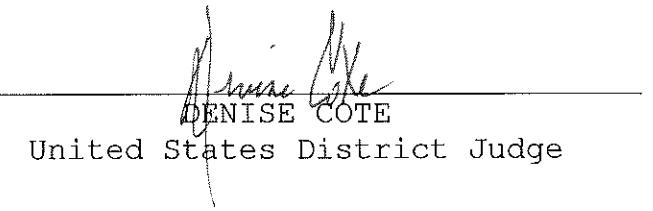
Furthermore, even if Shkreli is absent from the program for what he projects will be up to two months for transportation to and from this district to attend the December 14 trial and for attendance at the trial, he has not shown that he will be deprived of the opportunity to obtain the benefits of treatment for substance abuse. Nor has he shown that he will be deprived of the opportunity to earn at least some portion of the early release credit. Moreover, Shkreli does not dispute that he had two prior opportunities to participate in RDAP in a way that would have earned him full credit for early release under the RDAP program without interfering with the trial schedule and that he declined to take advantage of those opportunities.

Finally, the public interest in a timely disposition of the plaintiffs' claims and, if the plaintiffs prevail, the distribution of wrongfully obtained profits to the victims of the scheme alleged in this action, is significant. That public interest substantially outweighs Shkreli's individual interest in taking advantage of the opportunity to earn early release through the program he chose to enter on June 29, 2021.

Accordingly, a bench trial shall proceed as scheduled in Courtroom 18B on December 14, 2021 at 9:30 am.

SO ORDERED:

Dated: New York, New York
October 19, 2021


DENISE COTE

United States District Judge